

September 11, 2002

Honorable William A. Mehojah, Jr.  
Director  
Office of Indian Education Programs  
Bureau of Indian Affairs  
MS-3512, MIB  
1849 C Street, NW  
Washington, DC 20240-0001

Dear Mr. Mehojah:

This is to inform you that we have conditionally approved the Bureau of Indian Affairs' Eligibility Document Submission for Federal Fiscal Year (FFY) 2002 under Part B of the Individuals with Disabilities Education Act (IDEA). Our determination that you are eligible for a conditional approval is based on our receipt of the following documents submitted by the Bureau of Indian Affairs to the Office of Special Education Programs (OSEP):

1. The Part B Eligibility Document Submission for FFY 2002 including the Eligibility Documents submitted May 2000, subsequent revisions to those Eligibility Documents and the Submission Statement submitted June 26, 2002, July 8, 2002, and July 12, 2002.
2. The August 23, 2002 letter from the Bureau of Indian Affairs to OSEP, in which BIA assures that as soon as possible, but no later than July 1, 2003, BIA will complete all of the changes set forth in the August 14, 2002 issues chart including: 34 CFR §300.125 (b)(3); §300.575; §300.504 (b)(1), (10), and (14); §300.505(b); §300.509(b)(2); §300.526(c)(2); §300.556 (b)(1); §300.381(a) and (b); §300.142 and §300.147(a)(1).
3. In the August 23, 2002 letter, the Bureau of Indian Affairs also assures that it will take steps to ensure that, throughout the period of this grant award, all BIA-funded schools that provide special education and related services to children with disabilities will operate their programs in a manner fully consistent with Part B. BIA further assures that it will provide OSEP with a copy of a memorandum notifying all BIA-funded schools of the changes that impact on BIA-funded schools' provision of special education and related services that OSEP requires as a result of its review of the BIA's eligibility documents.

Please note that as part of your Eligibility Document Submission for FFY 2002, your State has made an assurance, under 34 CFR §80.11(c), that it will comply with all applicable Federal

statutes and regulations in effect with respect to the periods for which it receives grant funding. Any changes made by the BIA, after OSEP approval, to information that is a part of the BIA's eligibility documentation, must meet the public participation requirements of the IDEA and must be approved by OSEP before implementation.

The BIA's FFY 2002 IDEA Part B grant award is being released subject to FFY 2002 Special Conditions as set forth in Enclosure A that are being imposed pursuant to the Department's authority in 34 CFR §80.12. Specifically, OSEP determined that the BIA is not reporting publicly on the participation and performance of children with disabilities in State and district-wide alternate assessments as required at 20 U.S.C. 1412(a)(17) and 34 CFR §300.139.

The Biennial Performance Report for Part B of the IDEA for grant years 1999-2000 and 2000-2001 was due on May 31, 2002. Among other information, the Biennial Performance Report required that States submit information regarding children with disabilities' participation in and performance on Statewide assessments. 34 CFR §300.138 requires that children with disabilities participate in general State and district-wide assessment programs with appropriate accommodations and modifications in administration, if necessary. In addition, States are required to develop alternate assessments for those children with disabilities who cannot participate in State and district-wide assessment programs, even with appropriate accommodations and modifications in administration. States also must report on the progress of children with disabilities in the State toward meeting the established performance goals and indicators for children with disabilities on assessment, dropout rates and graduation rates, at a minimum (34 CFR §300.137).

The requirements that States establish performance goals and indicators on performance of children with disabilities on assessments, drop-out rates and graduation rates and report publicly and to the Secretary every two years on the progress of the State and of children with disabilities within the State toward meeting those goals, ensure that children with disabilities participate in State and district-wide assessment systems; develop and administer alternate assessments, if necessary; and report publicly on the participation and performance of children with disabilities in State and district-wide assessments are crucial to ensuring that children with disabilities are provided access to high-quality instruction in the general curriculum, and that States and districts are held accountable for the progress of these children. 20 U.S.C. 1412(a)(16)-(17); 34 CFR §§300.137-300.139. The requirements regarding the participation of children with disabilities in, and reporting on participation and performance of children with disabilities in regular assessments have been in effect since July 1, 1998; the same requirements regarding alternate assessments have been in effect since July 1, 2000. The information reported to the Department in the BIA's Biennial Performance Report for the 2000-2001 school year demonstrates that the BIA is not reporting on the participation and performance of children with disabilities in alternate assessments in the same frequency and detail as for nondisabled children as required by Part B.

The BIA's failure to report on the participation and performance of children with disabilities in alternate assessments in the same frequency and detail as for nondisabled children has resulted in

the Department imposing the FFY 2002 Special Conditions contained in Enclosure A of this letter. The reasons for doing so and the specific conditions are detailed in the enclosure. The BIA must administer these awards both in keeping with the applicable provisions of Federal law and regulations and the Special Conditions attached to the grant award document. Acceptance by the BIA of these grant awards constitutes an agreement by the BIA to comply with these Special Conditions.

Enclosed is the Bureau of Indian Affairs' Grants to States award of \$79,377,301 for funds appropriated for Federal Fiscal Year 2002 under section 611(c) of Part B of the Individuals with Disabilities Education Act (IDEA).

Under the section 611(i)(1) of IDEA, the award includes \$63,501,841 to be used by the Secretary of the Interior to meet the need for assistance for the education of children with disabilities on reservations aged 5 to 21, inclusive, enrolled in elementary and secondary schools for Indian children operated or funded by the Secretary of the Interior.

Under Section 611(i)(3), the award includes \$15,875,460 to be distributed by the Secretary of the Interior to tribes or tribal organizations or consortia of the above to provide for the coordination of assistance for special education and related services for children with disabilities aged 3 through 5 on reservations served by elementary and secondary schools for Indian children operated or funded by the Secretary of Interior. The funds received by a tribe or tribal organization must be used to assist in child find, screening, and other procedures for the early identification of children aged 3 through 5, parent training, and the provision of direct services. None of the funds provided under section 611(i)(3) can be used by the Secretary of the Interior for administrative purposes, including child count and the provision of technical assistance.

These awards are based on submission of a complete eligibility document package, a signed assurance statement regarding resolution of issues identified in OSEP's review of that eligibility document package, and implementation of the provisions of the Individuals with Disabilities Education Act. The complete eligibility document package and assurances must be made available for public inspection.

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We appreciate your ongoing commitment to the provision of quality educational services to children with disabilities.

Sincerely,

Stephanie S. Lee  
Director  
Office of Special Education Programs

Enclosures

cc: Sherry Allison